Editor's note: 89 I.D. 407; Appealed - dismissed as untimely, Civ.No. 83-79-BLG (D.Mont. Feb. 14, 1984)

MARY I. ARATA

IBLA 82-956 Decided August 11, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application M 52741(SD).

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Noncompetitive Leases

   Under 43 CFR 3112.4-1(a), a prospective lessee (i.e., one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

APPEARANCES: John H. Heiney, Esq., Ft. Wayne, Indiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mary I. Arata has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated May 17, 1982, and corrected by notice dated June 16, 1982, rejecting her simultaneous noncompetitive oil and gas lease application (M 52741(SD)).

Arata's application for parcel MT 164 was drawn with first priority in BLM's July 1981 drawing. The application card bore her holographic signature in ink and met all other pertinent requirements. Accordingly, on March 24, 1982, BLM sent her the material necessary to perfect her lease, including an "offer to lease and lease for oil and gas" form (Form 3110-2) and a stipulation form (Form MT-3109-1). 1/ BLM notified Arata that these forms must be signed and dated in ink by her or her attorney-in-fact and returned to BLM along with advance first-year rental within 30 days of her receipt of the notice.

On April 5, 1982, Arata filed the forms, neither of which bore her or her attorney-in-fact's handwritten signatures. Instead, they each had been "signed" by affixing a rubber-stamped facsimile of Arata's signature on the signature line.

On May 17, 1982, BLM rejected Arata's application because she had failed to personally sign the lease as required by 43 CFR 3112.4-1(a). BLM concluded that rejection was mandated in these circumstances, incorrectly

1/ BLM also enclosed other forms, but Forms 3110-2 and MT-3109-1 were the only two requiring signatures.

citing 43 CFR 3112.6-1(b). On June 16, 1982, BLM corrected this error noting that rejection is mandated by 43 CFR 3112.6-1(d). Arata appealed.

[1] The pertinent regulation, 43 CFR 3112.4-1(a), leaves no doubt that offer to lease and stipulation forms must be personally signed with the handwritten signature of either the applicant or his or her attorney-in-fact:

> (a) The lease agreement, consisting of a lease form approved by the Director, Bureau of Land Management, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental. Only the personal handwritten signature of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, in ink shall be accepted. [Emphasis supplied.]

It is equally clear under 43 CFR 3112.6-1(d) that BLM must reject the application where the applicant fails to comply with this requirement. Accordingly, BLM properly rejected appellant's application.

Appellant cites our previous decision in Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971), for the proposition that a rubber-stamped facsimile signature has the same effect as though the person's name was written in the person's own handwriting. Mary I. Arata, supra, concerned a previous regulation, not in effect at the time she filed the forms in the present case. This previous regulation, 43 CFR 3112.2-1(a) (1971), required only that the offer be "signed and fully executed" by the applicant or his agent. We held in Arata that this language was broad enough to encompass facsimile signatures.

The present regulation, quoted above, was adopted effective June 16, 1980, expressly to supercede the rule in Arata. Its language is abundantly clear that only the personal handwritten signature of the applicant, or his or her attorney-in-fact, will suffice. The comments published along with the final rulemaking, 45 FR 35156 (May 23, 1980), left no shred of doubt that facsimile signatures were not sufficient, either for simultaneous applications or lease offers:

> Statements of Qualifications--General Requirements--Some comments suggested that the requirement in the proposed rulemaking [44 FR 56176 (Sept. 28, 1979)], that qualification statements, applications and offers be "manually signed" did not exclude the use of rubber stamped signatures. In order to make it clear that only personal, handwritten signatures will be permissible, language has been added to the final rulemaking requiring "holographically (manually) signed" statements, applications and offers.
>
> As one comment pointed out, this change will overturn the rule established by the Interior Board of Land Appeals (IBLA) in Mary I. Arata, 4 IBLA 201 (1971). [Emphasis supplied.]

45 FR 35157 (May 23, 1980).

Appellant alleges that she was physically unable to sign her name when she affixed the facsimiles of her signature on the offer to lease and stipulation forms. We note, however, that appellant was able to holographically sign her application card, and that the dates on the lease forms in question appear to have been entered holographically. In any event, the regulation makes ample allowance for the handicapped by allowing agents to holographically sign qualification statements, applications, and offers, on behalf of any person unable to sign holographically. The comments to the final rulemaking explained this as well:

> A few comments recommended that provision be made in the final rulemaking for those applicants who are physically unable to write their own name so that they can participate in the leasing system. No change has been made in this section because persons who are physically incapacitated may use an agent.

45 FR 35159 (May 23, 1980).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Will A. Irwin
Administrative Judge